

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

POLICE AND FIRE RETIREMENT
SYSTEM OF THE CITY OF DETROIT,
ET AL.,

Plaintiffs,

CASE NUMBER: 08-12582
HONORABLE VICTORIA A. ROBERTS
Magistrate Judge R. Steven Whalen

v.

DONALD V. WATKINS, ET AL.,

Defendants.

ORDER ADOPTING THE MAGISTRATE JUDGE'S
OPINION AND ORDER

Before the Court is Defendants Donald V. Watkins's and Watkins Aviation, LLC's Objections to Magistrate Judge R. Steven Whalen's Opinion and Order Granting In Part and Denying In Part Plaintiffs Police and Fire Retirement System of the City of Detroit and the General Retirement System of the City of Detroit's Motion *In Limine* to Exclude the Expert Report, Rebuttal Report, and Related Expert Testimony of Donald V. Watkins.

Defendants say the Magistrate erred by holding Watkins is not qualified to testify as an expert under Fed. R. Evid. 702 on the value of certain stock and carbon credit entitlements conveyed by a company he owns and manages and by stating, in dicta, that "placing a high monetary value on hypothetical carbon credit entitlements for a project that does not exist seems highly speculative." (Doc. # 155; Magistrate's Opinion and Order at 7).

The Court will reverse a Magistrate's ruling on a pretrial, non-dispositive motion only if the decision is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a). The clearly erroneous standard applies to factual findings made by the Magistrate; his legal conclusions are reviewed under the "contrary to law" standard. *Gandee v. Glaser*, 785 F.Supp. 684, 686 (S.D. Ohio 1992), *aff'd*, 19 F.3d 1432 (6th Cir. Mar. 14, 1994) (Table). A finding is clearly erroneous when, "although there is evidence to support it, the reviewing court is...left with the definite and firm conviction that a mistake has been committed." *Robinson v. Allstate Ins., Co.*, No. 09-10341, 2011 WL 3111947, at *2 (E.D. Mich. July 26, 2011) (quoting *United States v. United States Gypsum Co.*, 330 U.S. 364, 395 (1948)). "If more than one permissible view of the evidence exists, the Magistrate's decision cannot be clearly erroneous." *Id.* (citing *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 573-74 (1985)). A legal conclusion that fails to apply or misapplies case law, statutes, or procedural rules is "contrary to law." *Id.* This standard requires the Court to use independent judgment. *Id.*

The Court carefully and thoroughly reviewed the record; the Magistrate's decision is neither clearly erroneous nor contrary to law. It is well supported by the authority he cites, namely, *Rosvold v. L.S.M. Sys. Eng'g, Inc.*, No. 04-75009, 2007 WL 3275107 (E.D. Mich. Nov. 6, 2007). Furthermore, the Court is not persuaded that his statement in dicta regarding the reliability of Watkins' opinion should be stricken.

The Court **REJECTS** both of Defendants' objections and **ADOPTS** the Magistrate's Opinion and Order.

IT IS ORDERED.

S/Victoria A. Roberts

Victoria A. Roberts

United States District Judge

Dated: February 2, 2012

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on February 2, 2012.

S/Linda Vertriest

Deputy Clerk